SINGLE BENCH

C.S.2001

(2)
(1)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, (C.G.)

4496
W.P. No. /2005

PETITIONERS:

P.R. No. 4763/05
Presented by Shri Nagent Rahul Jha
dated 14/9/05

1. Narendra Kumar Patel
Aged about 22 years
S/O Shri Parmeshwar Lal Patel
R/O Village & Post Jairamnagar
Khaira, Tehsil Masturi
Distrit Bilaspur (Chhattisgarh)

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2. Anurag Patel
Aged about 20 years
S/O Shri Motichand Patel, R/O B-283 Adarsh Nagar P.O. Kusmunda District Korba (Chhattisgarh)

VERSUS

RESPONDENTS:

R 1. State of Chhattisgarh
Through the Secretary
Department of Health Medical Education & Family Welfare,
D.K.S. Bhawan Mantralaya
Raipur (Chhattisgarh)

R 2. Director
Medical Education
D.K.S. Bhawan Mantralaya
Raipur (Chhattisgarh)

R 3. Guru Ghasidas University
Bilaspur (Chhattisgarh)
through the Registrar

शपथ आयुक्त
जिला न्यायालय बिलासपुर (छ.ग.)
बिलासपुर तहसील कोर्ट

(179)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.4496 of 2005

Narendra Kumar Patel & others

- Versus -

State of Chhattisgarh & others

POST FOR ORDER ON 30th SEPTEMBER, 2005

Sd/-
L.C.BHADOO
Judge

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.4496 of 2005

Narendra Kumar Patel & others

- Versus -

State of Chhattisgarh & others

Present: -

Mr. Rahul Jha, Advocate	:	For the petitioners.
Mr. Sandeep Dubey, Govt. Adv.	:	For respondent Nos.1 & 2
Mr. Manindra Shrivastava, Sr. Adv. with Shri Amrito Das, Advocate	:	For respondent Nos. 3 & 4
Mr. Y.C. Sharma, Advocate	:	For respondent No.6
Miss Sunita Jain, Advocate	:	For respondent Nos. 7 & 9.
Mr. P. Diwakar, Sr. Advocate with Miss Sunita Jain, Advocate	:	For respondent No.8.
Mr. Sanjay K Agarwal, Advocate	:	For respondent No.10.
Mr. Raja Sharma, Advocate	:	For the Intervener.

O R D E R

(Passed on 30th September, 2005)

L.C. BHADOO, J.

1. The petitioners had appeared in the combined Pre-Medical Test as OBC candidates conducted by the Chhattisgarh Board of Secondary Education, Raipur at the instance of respondent Nos.1 & 2 and secured 142nd & 161st position in merit list, have filed this writ petition questioning the procedure adopted by respondent Nos.2 to 4 in granting admissions to the candidates.

2. The petitioners' petition is that in W.P. No.3642/04 filed by Sudeep Shrivastava as 'Public Interest Litigation' the Full Bench of this Court has directed that the Chhattisgarh Institute of Medical Sciences, Bilaspur should admit the candidates in the first year MBBS course strictly on the basis of merit as also subject to the reservation policy, but respondents are not following the said order. The respondents are required to

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prepare the list of 59 candidates i.e. 41 of payment seats +18 seats diverted from the All India Quota, as those seats were remained unfilled. Whereas, respondent Nos.2 to 4 have not applied the reservation policy against 59 seats, therefore, the action of respondent Nos.2 to 4 is arbitrary and illegal. The second ground which has been raised by the petitioners herein is that after the Full Bench order when the payment seats are also to be filled up on the basis of normal fees and the payment seat system has been quashed, respondent Nos. 2 to 4 ought to have applied the reservation policy against all the 100 seats and not by bifurcating the seats into 41-41 and 9-9.

3. Return has been filed on behalf of respondent Nos.3 & 4 in which it has been mentioned that they are granting admissions strictly in accordance with the Full Bench order dated 23.9.2005 and as the 100 seats are not available, therefore, a combined merit list of 100 candidates including the reservation seats cannot be formed, as the Full Bench order is in respect of only 41 seats.

4. I have heard the learned counsel for the parties.

5. In order to appreciate the controversy it is necessary to mention the brief history of the case. The State of Chhattisgarh was formed w.e.f. 1.11.2000 under the M.P. Re-organization Act, 2000 and at that time there was only one medical college at Raipur with the capacity of 100 seats. A second medical college in the State of Chhattisgarh was, therefore, thought necessary in the public interest to meet the deficiency of qualified medical personnel in the State and to improve the availability of the medical manpower in the State. Accordingly, pursuant to an earlier resolution of the Planning and Evolution Board of the Guru Ghasidas University, Bilaspur (for short "the University") the State Government and the University entered into a

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Memorandum of Understanding on 18.1.2001 to establish a second medical college in the State of Chhattisgarh to be called as Chhattisgarh Institute of Medical Sciences (for short 'CIMS'). Under the said Memorandum of Understanding, CIMS was to be established, owned and managed by the University and for establishment of CIMS, the State Government was to provide the Sardar Vallabh Bhai Patel Hospital, Bilaspur with 467 beds, and with all its facilities and staff as well as the land measuring 25 acres in and around the said hospital. The State Government also agreed to provide to the CIMS, the funds, financial support for non-recurring expenditure on all necessary infrastructure comprising of building, equipments, books and furniture but the recurring expenditure on qualified doctors and other staff are being met by CIMS out of the fees recovered from the students admitted to the different medical courses in CIMS. For meeting such expenditure, out of the 100 seats on the MBBS course, CIMS started collecting in the year 2001 Rs.29,500/- per year per student for the first 50 seats, so called free seats and Rs.1,44,000/- per year for remaining 50 seats, so called payment seats including 15 seats for Non-resident Indians. However, Non-resident-Indians were not available for admission. From the academic session 2002-03 the fees against all the payment seats was enhanced to Rs.2,50,000/- per year, therefore, the admission on first 50 free seats were being made on the basis of merit and for remaining 50 seats admissions were being on payment basis and out of 50-50 seats, 15% seats i.e. 9-9 seats were to be filled by All India Quota. Accordingly, respondent Nos.2 to 4 were required to fill-up 41 seats as free seats and 41 seats as payment seats.

6. A Public Interest Litigation bearing W.P. No.3642/2004 was filed by one Sudeep Shrivastava for quashment of provision of payment seats i.e. 50 seats in the CIMS on the ground that CIMS is a Government college and all

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funds are being provided by the State Government, therefore, CIMS cannot be allowed to fill up 50 seats on payment basis, same being violative of Article 14 of the Constitution of India. The Full Bench of this Court vide order dated 23.9.2005 quashed the scheme of admission through payment seats and held that the same is arbitrary and violative of Article 14 of the Constitution of India and directed respondent Nos.2 to 4 to grant admissions against all the 41 seats strictly on the basis of merit list and after following the reservation policy. Even during the pendency of this writ petition the Full Bench vide its order dated 23.8.2005 ordered that *"for the time being, to ensure that all admissions take place within the schedule fixed by the Supreme Court, all the 41 payment seats will be filled up by candidates strictly on the basis of their merit subject to reservation, on their paying the normal fees that are payable for free seats. The aforesaid admissions and payment of normal fees instead of higher fees will be subject to result in this petition and this will be intimated to every student who is admitted against the 41 payment seats."* Ultimately, as has been mentioned above, vide order dated 23.9.2005 this order was maintained and respondent Nos.2 to 4 were directed to grant admissions against all the 41 seats on normal fees strictly on the basis of merit subject to the reservation.

7. Therefore, the above facts makes it clear that so far as the admissions against 41 seats meant for normal fees were already filled before passing this order and admissions against 41 payment seats are to be made as per the order of the Full Bench dated 23.9.2005. When the admissions against 41 free seats have already been made in the month of August, 2005 then there is no question of disturbing those admissions, as those admissions were made after following the reservation policy and now it would not be practically advisable to disturb those admissions, as the students to whom

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admissions have already been granted they are not before us and they are pursuing their studies. For these 41 seats admissions have been granted as per reservation policy, therefore, the ground taken by the petitioners that reservation policy should be followed in respect of all the 100 seats does not merit consideration looking to the above facts. Moreover, the point for consideration before the Full Bench was regarding only 41 payment seats and that question has been dealt with and decided by the Full Bench and the Full Bench has ordered that against 41 payment seats the admissions are to be made on normal fees strictly on the basis of merit subject to the reservation. The Full Bench has nowhere ordered that the reservation is to be applied in respect of all the 100 seats nor that was the issue before the Full Bench. Therefore, this ground raised by the petitioners is misconceived and there is no merit in this ground.

8. Now coming to the point regarding 59 seats, as has been mentioned above, that the Full Bench has ordered that 41 payment seats are to be filled by normal fees strictly on the basis of merit subject to the reservation, therefore, against 41 seats also the respondents were directed to fill these seats strictly on the basis of merit subject to the reservation and the petitioners' grievance is not that these 41 seats are not being filled up as per the reservation policy, their grievance is other way that the respondents should fill 59 seats after following the reservation, which is not possible looking to the facts of the case because 18 seats were to be filled up by All India Quota, as such those seats could not have been included for the purpose of reservation.

9. As far as the question of remaining All India Quota seats is concerned, it is informed that all the 18 seats have been diverted because these seats remained vacant and could not be filled up by All India Quota and now respondents are required to fill up these seats again strictly on the basis of merit subject to the reservation.

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They are not entitled to bifurcate 9-9 seats and give admission on that basis. When all the seats have diverted and as per Full Bench order dated 23.9.2005 now the respondent Nos.2 to 4 are required to fill up all the seats as free seats, as such they cannot prepare a merit list of 9 seats against free seats and 9 seats against payment seats when all seats have become free seats. Therefore, the respondents are required to fill up all these 18 seats strictly on the basis of the merit subject to the reservation.

10. In the result, the petition is disposed of with the direction that:

a. Now respondent Nos.2 to 4 to give admissions to 41 candidates against payment seats on normal fees strictly on the basis of merit subject to the reservation as per order of the Full Bench dated 23.9.2005;

b. for remaining All India Quota 18 seats which have been diverted to the CIMS, Bilaspur, as they could not be filled up by the All India Quota, respondent Nos.2 to 4 are directed to fill up these seats strictly on the basis of merit subject to reservation by forming one group of 18 seats and not by bifurcating in 9-9 seats.

However, it is made clear that as per the Full Bench order it has been directed that 10 students who have already been admitted on payment seats, their admissions should not be disturbed. At the same time, if any candidate of reserved category has been given admission in those 10 seats that shall not be counted against the seats (41+18), as those 10 admissions are beyond 100 seats.

Certified copy of this order be given today itself.

Sd/-
L.C.BHADOO
Judge

Roshan